IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1078 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CENTRAL BUREAU OF INVESTIGATION

Versus

THE SATE OF GUJARAT

Appearance:

MR AMIT J SHAH for Petitioner

MR RC KODEKAR APP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/04/2001

ORAL JUDGEMENT

#. Relying on the decision of the apex court in the case of C.B.I. through S.P., Jaipur Vs. State of Rajasthan & Ors. reported in 2001(1) Scale 250 the learned counsel

for the petitioner submitted that the Judicial Magistrate has no power to direct C.B.I. under Section 156(3) of the Criminal Procedure Code to conduct investigation into any offence committed within his territorial jurisdiction.

The facts of the case are that Spl. A.C.B. case No.2 of 1996 came up for hearing and evidence for the first time on 7.1.1999 before Additional Sessions Judge, Nadiad and at that time the Bench Clerk of the court aforesaid called for Muddamal from the Office of Nazir, which was given to the clerk Shri Shukla and in turn given to Shri Kiran Joshi, Senior Clerk. During the recording of the statement of the witnesses when Muddamal was required to be identified it was searched in the bag containing Muddamal and at that time article No.2 Rs.35,000/- i.e. 70 notes of Rs.500/= denomination could not be found therein. Though rigorous search has been made but the said Muddamal is not found and ultimately a criminal complaint was filed in Nadiad Town Police Station, which was registered as I. C.R. No.22/99 for the offences under Section 381 of the I.P.C. by the Court officer. It is the say of the petitioner that Investigation Officer, Nadiad Town Police Station, Nadiad for about 9 months could not get any fruitful result in the matter. the Nazir of the District Court of Kheda at Nadiad written a letter dated 29.9.99 to the learned Chief Judicial Magistrate, Nadiad requested therein to hand over the investigation of the case to C.B.I. On 29.9.99 the Chief Judicial Magistrate, Nadiad passed an order directing the C.B.I. to investigate the matter and report to him at the earliest. The C.B.I. through its Public Prosecutor filed an application in the court of Chief Judicial Magistrate, Nadiad praying therein for recalling of the order dated 29.9.99. This application was came to be rejected by the Chief Judicial Magistrate, Nadiad under its order dated 6.10.99. Hence this petition under Article 226 of the Constitution of India.

#. This petition is wholly misplaced and misconceived at the instance of none other than C.B.I. The C.B.I. is a litigant before the court like other litigant. It cannot be put in any special category or in a privileged category which prima facie appears to have been claimed by the petitioner in this petition. Leaving apart the merits of the matter, this petition is not maintainable in this court. The order of the Chief Judicial Magistrate challenged in this petition is revisable by the Sessions Court and reference in this respect may have to Section 397 of the Cr.P.C. Efficacious alternative remedy is available to the petitioner in the matter

against that order of Chief Judicial Magistrate but the C.B.I. instead of availing that remedy has chosen this path of filing this petition which is not only costly but also it consumes long time. The C.B.I. has to take all the care that in the matter where the order which is appealable or revisable that remedy is first availed of before coming up in this court. Instead of availing that remedy the C.B.I. by filing this petition has not only unnecessarily burdened the public exchequer but this court also by a litigation which was otherwise avoidable. This approach of the C.B.I. deserves to be deprecated and accordingly the same is deprecated. Against the order of the Chief Judicial Magistrate it has no remedy except to approach this court by this petition under Article 227 of the Constitution of India is not the case of C.B.I. also. The petitioner has efficacious alternative remedy in the matter against the order of Chief Judicial Magistrate and only on this ground this petition deserves to be dismissed.

#. A layman litigant who directly approach to this court in a matter where he has efficacious alternative remedy available under statute may be understandable and which may be taken to be a case of ignorance of the legal position by the litigant and lack of proper advice by the professional to whom he approached. But the C.B.I. cannot be put at par with that litigant. The C.B.I. may have its own legal advisors and otherwise also the officers attached to it are supposed to know these basic principles of law. Though in a case, where against the order impugned in this petition revision lies but the C.B.I. files the petition directly circumventing that remedy this cannot be tolerated by the court. At the cost of repetition it is to be stated that it is also not the case of the C.B.I. that against the order of the Chief Judicial Magistrate impugned in this petition the revision application before the Sessions Court is not maintainable. In the petition under Articles 226 or 227 of the Constitution of India it is the duty of the petitioner to state that in the matter he, she or it has no efficacious alternative remedy available. In this petition, the C.B.I. has not stated that in the matter i.e. against the impugned order it has no other efficacious alternative remedy. Non-mentioning of this fact concludes that the C.B.I. admitted that against the impugned order it has efficacious alternative remedy available. Despite of this admission which can be safely inferred from the petition it is really shocking, surprising and difficult to digest of this approach of the C.B.I. circumventing the statutory efficacious alternative remedy available against the impugned order.

The C.B.I., as said earlier, is a litigant like other litigants before this court which should not have felt shy or degraded to go before Sessions Court against the impugned order if it really felt aggrieved of the same. This approach of C.B.I. is certainly against well settled law laid down by catena of decisions of Hon'ble Supreme Court as well as High Courts. In the case of Shyam Kishore V. Municipal Corporation of Delhi, (1993) 1 SCC 22, the Lordships of Hon'ble Supreme Court held that "where adequate remedy can be read in the statute plea of resort to writ remedy under Arts. 226 and 227 must be discouraged." In a case where statutory alternative remedy is available to the litigant court would not interfere and direct the party to recourse to the alternative remedy available under statute. In this case, the alternative efficacious remedy is available to the petitioner and without any justification whatsoever it has directly come up in this court and this conduct of the C.B.I. deserves to be depricated. The C.B.I. is not respecting and adhering to the law laid down by Hon'ble Supreme Court and this court and despite of availability of efficacious alternative remedy directly approached this court minimum what is to be done by the court is to dismiss the petition. As this petition deserves to be dismissed only on the ground of availability of efficacious alternative remedy to the petitioner I do not consider it to be in the interest of petitioner itself to touch the merits of matter. Even if the petitioner has a strong case on merits but where against the impugned order it has efficacious alternative remedy, that remedy has to be first availed of.

#. In the result, this petition fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. The C.B.I. is directed to pay the costs of this petition to the State of Gujarat. I consider it to be a fit case for awarding costs of the petition to the State of Gujarat as the C.B.I. has unnecessarily dragged it in this litigation which is otherwise avoidable in case the officer of the C.B.I. would have gone into the provisions of well settled law re. maintainability of the writ petition in the court where against the impugned order adequate alternative efficacious remedy under statute is available. The learned counsel for the respondent-State states that he shall be paid Rs.400/= as fees for appearing in this matter. However, this is not only the cost which would have been incurred by the State of Gujarat in defending this case but incidental costs of litigation of the State Government may be much more than what the amount towards professional fees to be paid to

the Government advocate. The amount which is paid to the Government Advocates by the State of Gujarat is really in these days of high prices of the cost of living is very, very meagre. In defending this petition certainly the State of Gujarat would have born incidental charges and the interest of justice will be met in case this cost is quantified at Rs.1,000/=. This cost is to be paid by the C.B.I. not for any of its own fault, default or error but for the approach of its officer. In case, the officer who has advised to file this petition would have taken little care to look into the matter, the C.B.I. would not have been saddled with these costs and this court would not have been burdened with this unwarranted litigation. The Director of C.B.I. is directed to hold inquiry in this matter and whosoever is found responsible for filing this petition, this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Director, C.B.I.

(S.K.Keshote, J.)

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